

***United States Court of Appeals  
for the Second Circuit***



**JOINT APPENDIX**





UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

76-7483

---

STANLEY V. TUCKER,

Plaintiff/ Appellant

-v-

PAUL B. CRIKELAIR, ET AL

Defendants/ Respondents

19  
P/B

---

JOINT APPENDIX

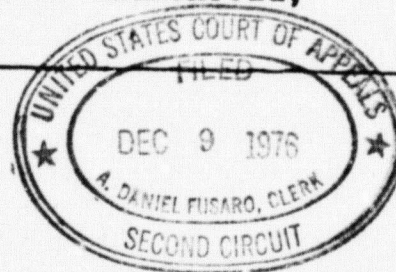
---

Note: This Appendix is deemed a "joint appendix" as on September 9th, 1976 Appellant served on Respondents his "Designation of Record on Appeal" and as of this date no additions or requests for change has been received from Respondents and the Appendix is now deemed "joint"

---

Appeal from the decision of the Hon M. J. Blumenfeld,  
USDC- District of Connecticut.

---



STANLEY V. TUCKER  
BOX 35  
Hartford, Conn 06101  
Plaintiff/Appellant

ORIGINAL

PAGINATION AS IN ORIGINAL COPY



INDEX TO APPENDIX

Civil Rights Complaint	<u>Page</u> A1 - A8
Motion & Brief For Designation of Three Judge District Court	B1 - B13
ANSWER by California Derendants	C1 - C2
ANSWER - Joan Cotter	D1 - D2
Motion to Strike & Brier	E1 - E3
Motion to Dismiss & Brier	F1 - F19
BRIEF in Opposition to Motion to Dismiss	G1 - G4
Memorandum of Decision	H1 - H7
Judgment	I1

Note: The statutes and laws involved are reproduced on  
pages B11 - B13



STANLEY V. TUCKER

C. A. NO \_\_\_\_\_

-v-

CIVIL RIGHTS COMPLAINT

JURY TRIAL DEMAND

PAUL B. CRIKELAIR,  
MARGIE J. THRELKELD,  
JEAN NEAL,

PETITION FOR THREE-JUDGE COURT

ROBERT R. ANDERSON, and :

JOHN P. COTTER, INDIVIDUALLY and in  
his capacity as CHIEF COURT ADMINISTRATOR for CONNECTICUT.

1. This is an action for declaratory and injunctive relief as to Connecticut General Statutes permitting the foreclosure of mortgages and liens; and an action for damages.
2. Jurisdiction is conferred on this Court by Title 28 USC 1331, 1332, and 1343 (1), (2), (3), and (4), and Title 28 USC 1655 and by Title 28 USC 2201 and 2. 2 and by Title 28 USC 2281 and 2284.
3. The Plaintiff / and Defendant, JOHN P. COTTER, are residents and citizens of the State of Connecticut and the defendants, PAUL B. CRIKELAIR, MARGIE, J. THRELKELD, JEAN NEAL and ROBERT R. ANDERSON, are all residents and citizens of the State of California.
4. The matter in controversy exceeds \$10,000.00 exclusive of interest or costs and arises under the Constitution and laws of the United States and more particularly the Fifth and Fourteenth Amendments to the United States Constitution which said Amendments guarantee the right to due process and equal protection of the laws and to liberty in one's person and / or property.
5. This action seeks a declaratory judgment that the following Connecticut General Statutes, as set forth hereinbelow, are unconstitutional and void by reason that said statutes operate to utilize state power to give preferential treatment to plaintiffs in foreclosure actions on mortgages & liens & deny equal treatment to defendants in foreclosure actions on mortgages and liens and further confiscate private property without compensation for public purposes as set forth hereinbelow.



- 5 A. Connecticut General Statute 49-14 is unconstitutional and void because it permits deficiency judgments for plaintiffs where the claim exceeds the appraisal but does not permit deficiency judgments in favor of the defendant where the appraisal exceeds the claim.
- 5 B. Connecticut General Statute 49-14 is unconstitutional and void because it denies due process as to the value of the property foreclosed by precluding a jury trial as to value and by precluding the introduction of testimony, presentation of witnesses and the right to confront witnesses and to cross-examine witnesses as to value.
- 5 C. Connecticut General Statute 49-25 is unconstitutional and void because it denies due process as to the value of property foreclosed by precluding a jury trial as to value and by precluding the introduction of testimony, presentation of witnesses and the right to confront witnesses and to cross-examine witnesses as to value.
- 5 D. Connecticut General Statute 49-27 is unconstitutional and void because it provides preferential treatment for plaintiffs and denies equal treatment for defendants by permitting on foreclosure sale a plaintiff "to bring into court only so much of such proceeds as exceed the amount due upon his judgment debt, interest and costs" whereas a defendant is denied the equivalent right to bring in only so much proceeds as will be due on the judgment debt, interest and costs but instead is obligated to bring into court his total equity-in the property.



5 E. Connecticut General Statute 49-28 is unconstitutional and void by reason that it denies equal protection and gives plaintiffs in foreclosure actions preferential treatment by permitting deficiency judgments for

plaintiffs where the claim exceeds the sale proceeds but does not permit deficiency judgments to have deducted the full loss sustained by defendants where the sales price is less than the appraisal but only requires one/half of the difference between the selling price and the appraised value to be deducted from the debt or deficiency judgment.

5 F. Connecticut General Statutes 49-14 & 49-25, are each further void and unconstitutional for the further reason that each denies due process by failure to provide notice and a hearing at which either plaintiff or defendant can object to the appraisal report filed with the clerk, or to introduce testimony as to value or to cross-examine the appraisers or to demand a jury trial as to value.

6. This action requires the speedy convening of a three-judge District Court pursuant to Title 28 USC 2281 and 2284 to rule upon the constitutional challenges to Connecticut G. S.

49-14, 49-25, 49-27 and 49-28.

7. This action seeks injunctive relief, both temporary and permanent pursuant to Title 42 USC 1983 and 1985 and Title 28 USC 2281 and 2282 and 2284 upon grounds that Plaintiff faces immediate and irreparable harm as set forth herein below.

8. Defendant, JOHN P. COTTER, is a STATE OFFICER who has sworn an oath to uphold the federal constitution and the amendments thereto and whose primary duty under Conn. G. S. 51-2 is...."the proper conduct of the business of the courts"



The policies and practices carried out under the aforesaid unconstitutional statutes are of state wide application in that under Conn. G. S. 52-28 both the Court of Common Pleas and Superior Courts have concurrent jurisdiction over forelclosure actions and under the Court Reorganization Act, PA 74-183, the Circuit Court was abolished and consolidated with the Court of Common Pleas so that the above policies and statutes may at any time be enforced by each or any of the Judges of the State of Connecticut, State Officers, operating in any part of the state by reason of the Quarterly ReAssignment of Judges.

In Boddie v Connecticut, 401 US 371, DEFENDANT, JOHN P. COTTER, refused due process and equal protection rights to welfare recipients in Connecticut until after the decision of the UNITED STATES SUPREME COURT when on June 7th 1971 Section 28A of the Connecticut Practice Book was adopted conforming Connecticut practice to the federal decision.

9. DEFENDANT, JOHN P. COTTER, has wantonly and willfully and maliciously and negligently permitted the existence and continuance of state-wide practices and state-wide statutes G. S. 49-14-, 49-25, 49-27, and 49-28 that deny due process and equal protection of the laws and act to confiscate private property without compensation all in violation of the UNITED STATES CONSTITUTION and the AMENDMENTS as set forth herein.

10. Declaratory relief and injunctive relief is requested directed at DEFENDANT, JOHN P. COTTER, because it is believed due to his position as CHIEF COURT ADMINISTRATOR that he is the proper person and proper STATE OFFICER to whom such relief should be directed.

A4



11. No damages are claimed at this time against DEFENDANT, JOHN P. COTTER, because none of the threatened foreclosures have materialized as yet and because the damage allegations set forth hereinbelow are directed at actions carried out by the California defendants or their agents or their attorney.

12. DEFENDANTS, PAUL B. CRIKELAIR, MARGIE J. THRELKELD, JEAN NEAL, and ROBERT R. ANDERSON, hereafter called CALIFORNIA DEFENDANTS have filed upon approximately 14 parcels of real estate in Connecticut with ownership interest by Plaintiff a multitude of "judgment liens" none of which result from trial in state or federal forums in Connecticut but instead are prohibited as "phoney Judgments" by reason of violations of P.A. 73-498, "Uniform Enforcement of Foreign Judgments Act," and by reason of being unfit for "full faith and credit" be reason of denials of due process in the trial courts of California where the judgments originated.

13. The CALIFORNIA DEFENDANTS do not seek security for their claimed debts as is permitted by law but via a stream of correspondence issued in California by their chosen attorney and/ or agent, DEFENDANT - ROBERT R. ANDERSON, have revealed their dark and sinister motive to be ...."to bring about a holocaust of foreclosures".....  
...."to bring about the total financial ruin of plaintiff".  
Thus wantonly and willfully, fraudulently and maliciously the CALIFORNIA DEFENDANTS seek to use the unconstitutional and void foreclosure statutes of the STATE OF CONNECTICUT to maliciously inflict damages on Plaintiff. Plaintiff claims damages against THE CALIFORNIA DEFENDANTS for ABUSE OF PROCESS By reason of their use and of their threatened use of the



unconstitutional and void foreclosure statutes of Connecticut as set forth herein for an ULTERIOR PURPOSE namely the financial ruin of the plaintiff. Because of the malicious motives of the CALIFORNIA DEFENDANTS plaintiff claims both compensatory and exemplary damages. Plaintiff claims damages for necessarily ordering appraisals estimated to cost hundreds if not thousands of dollars and consuming months of work in order to protect his interests and emotional distress and mental suffering on account of the threats to foreclose all of his properties and on account of the attempt to foreclose all of his properties. Plaintiff claims damages of Fifty Thousand Dollars (\$50,000).

14. That in other federal actions brought in this District and some on appeal the Plaintiff is challenging the validity of the judgment liens and/ or of the statutes permitting judgment liens. Plaintiff does not exercise these same challenges here but independently challenges the statutes set forth herein. This Plaintiff does not quarrel with the provisions of P.A. 73-498 which operates to prohibit

"phoney foreign judgments" as plaintiff believes P.A. 73-498, once complied with operates to cure constitutional deficiencies in former or other statutes permitting the recording of judgment liens. Instead Plaintiff contends that the threatened foreclosures are based on "phoney foreign judgments" prohibited by P. A. 73-498.

15. That Plaintiff faces immediate and irreparable harm because in "normal" or "good" economic times the foreclosure statutes of Connecticut are not conspicuous as to their



claimed constitutional deficiencies because the volume of foreclosures is low and sales prices are close to appraisals but now going into the second year the United States and Connecticut have suffered from a severe recession coupled with powerful inflationary forces with intense inflation in interest rates and a continuing absence of mortgage money available from lending institutions. That as a result the amount or volume of foreclosures in Connecticut has risen to about 25% of the 1932 depression peak and that sales prices are falling far below appraisal values and in some foreclosures no offers are made at all. The result is an almost certainty that under the unconstitutional and void statutes complained of herein a defendant in a foreclosure action is subject to large financial losses if not financial ruin. Clearly it might be wisdom on the part of the Connecticut Legislature to adopt amendments to the statutes to limit or prohibit or control foreclosures during periods of severe recession and / or inflation to avoid confiscating property of defendants without the compensation mandated by the federal CONSTITUTION and the AMENDMENTS thereto.

VERIFICATION

STATE OF CONNECTICUT )  
COUNTY OF HARTFORD ) ss

I, STANLEY V. TUCKER, being duly sworn, depose and say that I have read and understand the allegations set forth in the complaint above and the allegations therein are true and correct to the best of my information and belief.

Sworn to and subscribed to before me. -6-  
*Abel M. Tangerone* NOTARY PUBLIC.

ABEL M. TANGERONE  
My commission expires on March 31, 1979

*Stanley V. Tucker*  
STANLEY V. TUCKER



WHEREFORE Plaintiff prays judgment against Defendants and each of them as follows:

1. A judgment by a three-judge district court speedily convened that General Statutes 49-14, 49-25, 49-27 and 49-28 are unconstitutional and void.
2. Temporary, preliminary and permanent injunctions restraining the defendants individually and DEFENDANT, JOHN P. COTTER in his capacity as CHIEF COURT ADMINISTRATOR, from permitting instigating or allowing or initiating any foreclosure actions at all or involving liens caused by the CALIFORNIA DEFENDANTS until the statutes complained of have been replaced with Constitutionally acceptable statutes.
3. Damages of Fifty Thousand Dollars (\$50,000)
4. Costs of suit and such further relief as to this Court may appear appropriate.

By Stanley V. Tucker

STANLEY V. TUCKER  
Box 35  
Hartford, Conn 06101

JURY TRIAL DEMAND

Pursuant to Rule 38 FRCP plaintiff hereby serves and files his demand for jury trial on all issues so triable.

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER,

Plaintiff

-v-

PAUL B. CRIKELAIR, ET AL

Defendants

No H 75-310

NOVEMBER 5th, 1975

MOTION FOR DESIGNATION OF JUDGES TO THREE-JUDGE COURT

Pursuant to Title 28 USC 2281 and 2284 the Plaintiff moves the court for its designation of judges to constitute a Three-Judge District Court to hear the constitutional challenge as to Connecticut statutes complained of herein and requests an expedited hearing date pursuant to Title 28 USC 2284 (4).

---

STANLEY V. TUCKER

Certificate of Service

I, STANLEY V. TUCKER, hereby certify that on this 5th date of November 1975 I served the above document on the defendants herein by depositing in the U. S. mails at Hartford, Conn postage prepaid first class and addressed:

Robert R. Anderson  
Box 671  
Santa Paula California 93060

Daniel R Schaefer  
Asst Attorney General  
Barney Lapp  
Asst Attorney General  
30 Trinity  
Hartford, Conn

B1

---

STANLEY V. TUCKER



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER,  
Plaintiff

-v-

PAUL B. CRIKELAIR, ET AL.  
Defendants.

C. A No H 75-310

NOVEMBER 10th, 1975

\*\*\*\*\*  
BRIEF IN SUPPORT OF  
APPLICATION FOR THREE-JUDGE COURT  
\*\*\*\*\*

JURISDICTIONAL STATEMENT

Jurisdiction for this action in the District Court is based on the 5th & 14th Amendment to the United States Constitution, the Civil Rights Acts, Title 28 USC 1331, 1332, and 1343 (1), (2), (3), and (4) and by Title 42 USC 1981, 1983, and 1985, and by Title 42 USC 1988 and by the Declaratory Judgment Act, 28 USC, 2201 and 2202 and by 28 USC 2281 et seq., providing for a three judge district court.

B2

STANLEY V. TUCKER  
Box 35  
HARTFORD, Connecticut 06101  
PLAINTIFF

TOPICAL INDEX

	<u>Page</u>
Jurisdictional Statement	Cover
Issues For Review	1
Statement of the Case	3
Argument	4
I. CONNECTICUT DENIES EQUAL PROTECTION AND DUE PROCESS OF LAWS WHEN IT PRACTICES ECONOMIC DISCRIMINATION AS BETWEEN PLAINTIFFS AND DEFENDANTS IN FORECLOSURE ACTIONS.	5
II. CONNECTICUT'S FORECLOSURE STATUTES DISCRIMINATE BY A SUSPECT CLASSIFICATION	6
Constitutional Amendments Violated	8
Conn G. S. Complained of	8
Certificate of Service By Mail	10



ISSUES FOR REVIEW IN SUPPORT OF THREE-JUDGE COURT

The issues to be considered in review of an application for a three-judge court are limited by Title 28 USC 2284.

A. FILING OF AN APPLICATION FOR THREE-JUDGE COURT  
LIMITED JURISDICTION OF DISTRICT COURT TO NOTIFICATION  
TO CHIEF JUDGE OF THE CIRCUIT COURT OF APPEALS

Title 28 USC 2284 sets out statutory procedure that must be followed when a petition or application is filed for a three-judge district court. The District Court must immediately notify the Chief Judge of the Circuit so that an assignment of judges to the panel can be made. 28 USC 2284 (1). All pending matters by law must be heard by the Three-judge panel.

"A three-judge court has jurisdiction to decide a complaint..... and single-judge district court had no jurisdiction....."

Idlewild Bon Voyage Liquor Corp v Rohan  
289 F 2d 426

A recent action, Goosby v Osser, 409 U S 512, 1973, involved the reversal of a District Court decision, upheld by the Court of Appeals, on grounds that the single judge was without power to decide the constitutional issue (although the Pennsylvania state defendants conceded unconstitutionality) but held that under the statute only a THREE-JUDGE DISTRICT COURT had jurisdictional power. Goosby, supra, is of great importance because the UNITED STATES SUPREME COURT clarifies the standards to be followed in determining the threshold question of "substantiality" of the federal issue on



Goosby. Supra. P 518:

"Constitutional insubstantiality" for this purpose has been equated with such concepts as "essentially fictitious" *Baily v Patterson* 369 U. S. at 33; "wholly insubstantial," *ibid*; "obviously frivolous" *Hannis Distilling Co v Baltimore* 216 U S 285 ( 1910); and "obviously without merit" *Ex Parte Poresky* 290 US 30. The limiting words "wholly" and "obviously" have cogent legal significance. In the context of the effect of prior decisions upon the substantiality of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purpose of 28 USC 2281. A claim is insubstantial only if "its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy." *Ex Part Poresky*, supra, p 32.

B. THE SECOND CIRCUIT COURT OF APPEALS RECENTLY  
DRAMATIZED THE PROFOUND STATUTORY REQUIREMENT  
FOR A THREE-JUDGE COURT CANNOT LIGHTLY BE  
AVOIDED - EVEN BY STIPULATION BY THE PARTIES.

Maggett v Norton. 519 F 2d 599

June 30, 1975

Page 603: "As long as Congress keeps the three-judge court statutes on the books, we see no escape from that conclusion in this case"



STATEMENT OF THE CASE

PLAINTIFF, STANLEY V. TUCKER, is resident and citizen of Connecticut and Defendants, PAUL B. CRIKELAIR, MARGIE J. THRELKELD, JEAN NEAL, and ROBERT R. ANDERSON, are residents and citizens of California and hereafter called CALIFORNIA DEFENDANTS and have filed upon 14 parcels of real estate in Connecticut with ownership by Plaintiff a multitude of "judgment liens" none of which result from trial in state or federal forums in Connecticut but instead are prohibited as "phoney judgments" by reason of violations of FA 73-498, "Uniform Enforcement of Foreign Judgments Act," and by reason of being unfit for "full faith and credit" by reason of denials of due process in the trial courts of California.

With hints of Edgar Allen Poe type of madness in his writings, ROBERT R. ANDERSON, purportedly acting on behalf of all CALIFORNIA DEFENDANTS, in a stream of correspondence originating in California, has revealed a dark and sinister purpose namely to exploit built in debtor/ creditor inequalities in Connecticut's foreclosure statutes to ..... "bring about the total financial ruin of Plaintiff...." .... "to create a halocaust of foreclosures."

Since the federal constitution has written in clauses to prevent use of state process to cause injury by denial of due process or of equal protection of the laws this action petitioning for a three-judge court naturally follows to review the alleged deficiencies in the Connecticut foreclosure statutes complained of, G. A. 49-14, 49-25, 49-27, and 49-28 and to declare said statutes as void on grounds of being offensive to the federal constitution and the amendments thereto.



## ARGUMENT

### I. CONNECTICUT DENIES EQUAL PROTECTION AND DUE PROCESS OF LAWS WHEN IT PRACTICES ECONOMIC DISCRIMINATION AS BETWEEN PLAINTIFFS AND DEFENDANTS IN FORECLOSURE ACTIONS

In an early and excellent discussion of the equal protection clause, Tussmand and Tenbrock, "The Equal Protection of the law" 37 Cal . Rev 341 (1949) wrote of the 14th Amendment to the U. S. Constitution that"

"We now know that the equal protection clause was designed to impose upon the states a positive duty to supply protection to all persons in the enjoyment of their natural and inalienable rights - especially life, liberty and property - and to do so equally. We also know that the equal protection clause, the only clause of section one of the 14th Amendment that added new language to the Constitution, was originally regarded as the most basis and sweeping of the three".....

The equal protection clause has been applied to economic discrimination, and its effect has been to render "the mere state of being without funds (as) a neutral fact - constitutionally an irrelevance, like race, creed, or color "

Edwards v California 314 U S 160, 184 (1941)

Thus financial barriers may not be imposed so as to deny equal protection of fundamental rights, such as the right to vote. Harper v Virginia State Bd of Elections . 383 U. S. 663 (1966). An equally significant right is that embodied in access to the courts - the right to petition for redress of grievances: NACCP v Button 371 U. S. 415 (1963) Brotherhood of Railroad Trainmen v Virginia 377 U S 1 (1964). See also Griffin v Illinois 351 U S. 12 (1956)

The classic language of the High Court in Griffin equally applicable to the facts of this action and the inherent discrimination practiced by Connecticut in its favored treatment of plaintiffs over defendants is of great interest.

B7



Griffin supra P 16- 17:

"Providing equal justice for poor and rich, weak and powerful alike is an age- old problem. People have never ceased to hope and strive to move closer to that goal. This hope, at least in part, brought about in 1215 the royal concessions of the Magna Charta: "To no one will we sell, to no one will we refuse, or delay, right or justice... No free man shall be taken or imprisoned, or disseised, or outlawed, or exiled, or anywise destroyed; nor shall we go upon him nor send him, but by the lawful judgment of his peers or by the laws of the land."

Griffin supra P 19:

"There can be no equal justice where the kind of trial a man gets depends on the amount of money he had. Destitute defendants must be afforded as adequate appellate review as defendants who have money to buy transcripts."

II. CONNECTICUTS FORECLOSURE STATUTES DISCRIMINATE BY A SUSPECT CLASSIFICATION.

The language clearly shows advantages of an economic nature granted in Connecticut to "plaintiff" litigents in foreclosures as against the defendants as a class. It hardly needs saying that Plaintiffs as a "class" in foreclosure action are rich as a group ususally consisting of banks, loan associations and holders of liens or judgments. The Defendants in a foreclosure action are usually the poor and the oppressed.... those without jobs or income to pay all of their debts and thus subjected to foreclosure actions on real property that they possess. The result in Connecticut is an invidious discrimination automatically to benefit the rich as a class and to deny to the poor as a class equal protections of the laws. Thus the Connecticut system of discrimination falls squarely within that "forbidden classification" as defined by the U. S. Supreme Court in its decisions on equal protection of the laws.

Edward B. Sora - Justice Jackson - "The mere state of being without funds is constitutionally irrelevant"



The constitutional principles applicable to equality of treatment of debtors and creditors was recently explored by the U. S. Supreme Court in a series of consistent decisions the held debtors must be entitled to a fair hearing and notice of hearing before deprivation of property.

See      Sniadach v Family Finance Corp 395 US 337  
         Bell v Burson 402 U S 535  
         Lynch v Household Finance 405 U S 538  
         Tucker v Maher 405 U S 1052  
         Fuentes v Shevin 407 U S 67

Fuentes supra P 87 : " It is enough to invoke the procedural safeguards of the 14th Amendment that a significant property interest is involved."

The clearly expressed inference of the above line of case was to the effect that on fair hearing that the relative interests of both creditor and debtor would equally be protected by either state or federal courts.

Lynch supra P 555: " One assumption underlying ..... is that state courts will vindicate constitutional claims as fairly and efficiently as federal courts."

Recent case law both state and federal has expanded the meaning of equal protection by giving to certain classes (women v men) true equality under the law which formerly had been denied by statutes such as Connecticut's foreclosure statutes which give preferential treatment to plaintiffs as a class (wealth) versus defendants as a class ( poor people who cannot pay the mortgage). See Family Law Reporter 2142. Alabama Supreme Court extends rights formerly limited to husbands to wives for loss of consortium.

The standard has been stated in Berry v School District of City of Benton Harbor Mich 6th C. A. 505 P 2d 239

39 P 239 "It is not necessary to prove discriminatory motive, purpose or intent as a prerequisite



The Connecticut statutes complained of discriminate by giving Plaintiff's deficiency judgments while the equal right is denied to Defendants where the sale is below the appraised market value. There can be no "compelling state interest" in robbing the poor to fatten the rich. Where there is a rational state objective to be served the federal courts have approved classifications that meet this objective. For example certain rights to firemen and police officers in San Antonio were held to be constitutionally permissible where they received different treatment by reason of extra medical. Muzquiz v San Antonio 520 F 2d 993 1975.

Many cases have explored special treatment of different government employees.

Thompson v Gallagher 489 F 2d 443 1974

P 444: A regulation not reasonably related to a valid government interest may not stand in the face of a due process attack; likewise, a classification which serves no rational purpose or which arbitrarily divides citizens into different classes and treats them differently violated the equal protection clause."

The Connecticut statutes complained of arbitrarily divide citizens and discriminate against the poor (defendants) as a class for no useful state purpose. Surely, it cannot be said that the State of Conn. gains by making the poor poorer and the rich richer!

See Goossart v Cleary 335 U S at 462

Skinner v Oklahoma 316 U S 535

F. S. Royster Guano Co v Virginia 253 U S 412

Missouri Ex Rel Gaines v Canada 305 U S 332

Yick Wo v Hopkins 118 U S. 356

RESPECTFULLY SUBMITTED:

STANLEY V. TUCKER

B10



CONSTITUTIONAL AMENDMENTS VIOLATED

FIFTH AMENDMENT: "No person shall..... be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public purposes without just compensation."

SEVENTH AMENDMENT: Civil Trials - "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

FOURTEENTH AMENDMENT: " Section 1 " No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

CONNECTICUT GENERAL STATUTES COMPLAINED OF AS OFFENSIVE TO THE U. S. CONSTITUTION AND THE AMENDMENTS THERETO

**§ 49-14. Appraisal of mortgaged property after foreclosure. Deficiency judgment**

Upon the motion of any party to a foreclosure, the court shall appoint three disinterested appraisers, who shall, under oath, within ten days after the time limited for redemption has expired, appraise the mortgaged property and shall make written report of their appraisal to the clerk of the court where such foreclosure was had. Such report shall be a part of the files of such foreclosure suit, and such appraisal shall be final and conclusive as to the value of such mortgaged property. The mortgage creditor, in any further action upon the mortgage debt, note or obligation, shall recover only the difference between the value of the mortgaged property as fixed by such appraisal and the amount of his claim; and the court in which such action is pending may, if such appraisal and report thereof have been made, render judgment for the plaintiff for the difference between such appraisal and the plaintiff's claim, provided application for such deficiency judgment has been made by the plaintiff within ninety days after the time limited for redemption has expired. In reckoning such period of ninety days, the months of July and August shall be excluded from the computation. (1949 Rev., § 7195.)

B11



CONNECTICUT GENERAL STATUTES COMPLAINED OF AS OFFENSIVE  
TO THE U. S. CONSTITUTION AND THE AMENDMENTS THERETO continued

**§ 49-25. Appraisal of property**

When the court in any such proceeding is of the opinion that a foreclosure by sale should be decreed, it shall, in its decree, appoint a person to make such sale and fix a day therefor, and shall direct whether the property shall be sold as a whole or in

parcels, and how such sale shall be made and advertised; but, in all cases in which such sale is ordered, the court shall appoint three disinterested persons who shall, under oath, appraise the property to be sold and make return of their appraisal to the clerk of such court. If they cannot agree, an amount agreed upon by a majority may be accepted by the court at its discretion, and the expense of such sale and appraisal shall be paid by the plaintiff and be taxed with the costs of the case. If, after judgment has been rendered, the amount found to be due and for which foreclosure is decreed, together with the interest and the costs, is paid to the plaintiff before the sale, all further proceedings in the suit shall be stayed. (1949 Rev., § 7206.)

**§ 49-27. Disposal of proceeds of sale**

The proceeds of each such sale shall be brought into court, there to be applied if the sale is ratified, in accordance with the provisions of a supplemental judgment then to be rendered in such cause, specifying the parties who are entitled to the same and the amount to which each is entitled; and, if any part of the debt or obligation secured by the mortgage or lien foreclosed or by any subsequent mortgage or lien was not payable at the date of the judgment of foreclosure, it shall nevertheless be paid as far as may be out of such proceeds as if due and payable, with rebate of interest where such debt was payable without interest, provided, if the plaintiff is the purchaser at any such sale, he shall be required to bring into court only so much of such proceeds as exceed the amount due upon his judgment debt, interest and costs. (1949 Rev., § 7208.)



CONNECTICUT GENERAL STATUTES COMPLAINED OF AS OFFENSIVE  
TO THE U. S. CONSTITUTION AND THE AMENDMENTS THEREO continued

**§ 49-28. When proceeds of sale will not pay in full**

If the proceeds of such sale are not sufficient to pay in full the amount secured by any mortgage or lien thereby foreclosed, the deficiency shall be determined, and thereupon judgment may be rendered in such cause for such deficiency against any party liable to pay the same who is a party to the cause and has been served with process or has appeared therein, and all persons liable to pay the debt secured by such mortgage or lien may be made parties; but all other proceedings for the collection of the debt shall be stayed during the pendency of the foreclosure suit, and, if a deficiency judgment is finally rendered therein, such other proceedings shall forthwith abate. If the property has sold for less than the appraisal provided for in section 49-25, no judgment shall be rendered in such suit or in any other for the unpaid portion of the debt or debts of the party or parties upon whose motion the sale was ordered, nor shall the same be collected by any other means than from the proceeds of such sale

until one-half of the difference between such appraised value and such selling price has been credited upon such debt or debts as of the date of sale; and, when there are two or more debts to which it is to be applied, it shall be apportioned between them. (1949 Rev., § 7209.)

Certificate of Service by Mail

I, STANLEY V. TUCKER, hereby certify that on this 10th day of November 1975 I served the above Brief on the Defendants herein by depositing in the U.S. mails, postage prepaid addressed:

Robert R. Anderson, Esq  
621 E. Main Street  
Santa Paula, California

Daniel R. Schaefer  
Barney Lapp  
Asst Attorney General  
30 Trinity Street  
Hartford, Conn 06115

By \_\_\_\_\_



Plaintiff,

Civil Action No. H-75-310

-VS-

ANSWER TO COMPLAINT

PAUL B. CRICKELAIR, MARGIE  
J. THRELKELD, JEAN NEAL,  
ROBERT R. ANDERSON and  
JOHN P. COTTER, etc.,

Defendants.

PAUL B. CRIKELAIR, MARGIE J. THRELKELD, JEAN NEAL and  
ROBERT R. ANDERSON ("defendants") answer the complaint herein  
as follows:

## FIRST DEFENSE

1. Defendants deny that jurisdiction is conferred on this court pursuant to 28 U.S.C.A. § 2281 or 2284, or that the action requires a three-judge district court.

2. Defendants deny that plaintiff faces immediate or irreparable harm, or any harm at all, in any manner alleged in the complaint.

3. Defendants deny as a matter of law all arguments and conclusions in paragraphs 5 through 5F, 8, 9, and 12 through 15.

## SECOND DEFENSE

4. The complaint fails to state a claim upon which relief can be granted.

### THIRD DEFENSE

5. The validity of the judgment liens of defendant JEAN NEAL has been established by judgment of this court on March 5, 1975, in Tucker vs Neal et al., Civil Action No. H-8, affirmed in the

C1



1 United States Court of Appeals for the Second Circuit, No. 74-1921,  
2 certiorari denied October 14, 1975, United States Supreme Court,  
3 No. 75-147.

4 FOURTH DEFENSE

5 6. The validity of the judgment liens of defendants has been  
6 established by judgment of this court on April 21, 1975, in Tucker  
7 vs Meskill et al., Civil Action No. H-74-358, appeal pending in  
8 the United States Court of Appeals for the Second Circuit, No. 75-  
9 7326.

10 FIFTH DEFENSE

11 7. Another action is now pending in this court between  
12 plaintiff and defendants JEAN NEAL and ROBERT R. ANDERSON, Tucker  
13 vs Neal et al., Civil Action No. H-217, wherein plaintiff  
14 challenges the validity or propriety of some or all of the judgment  
15 liens of JEAN NEAL.

16 SIXTH DEFENSE

17 8. Another action is now pending in this court between  
18 plaintiff and defendant ROBERT R. ANDERSON, Anderson vs Tucker, .  
19 Civil Action No. H-74-364, for foreclosure of the judgment liens  
20 of ROBERT R. ANDERSON, as assignee of defendants PAUL B. CRIKELAIR  
21 and MARGIE J. THRELKELD, wherein plaintiff has failed to plead  
22 the matters alleged in his present complaint.

23  
24 WHEREFORE, defendants demand judgment dismissing plaintiff's  
25 complaint and awarding defendants their costs.

26 Dated: October 23, 1975.

27 /s/ Paul B. Crikelair  
28 PAUL B. CRIKELAIR

29 /s/ Margie J. Threlkeld  
30 MARGIE J. THRELKELD

31 /s/ Jean Neal  
32 JEAN NEAL

C2

## DISTRICT OF CONNECTICUT

• • • • •

D




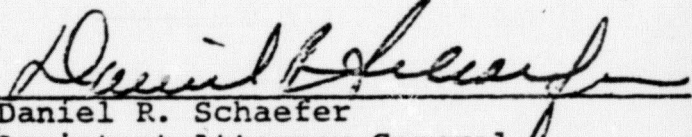
to form a belief and leaves the Plaintiff to his proof.

DEFENDANT, JOHN P. COTTER,  
individually and in his capacity as  
Chief Court Administrator for  
Connecticut, only

By: CARL R. AJELLO  
ATTORNEY GENERAL

Service certified  
pursuant to Rule 5b  
F.R.C.P.

  
Daniel R. Schaefer  
Assistant Attorney General  
30 Trinity Street  
Hartford, Connecticut 06115

  
Daniel R. Schaefer  
Assistant Attorney General

30 Trinity Street  
Hartford, Connecticut 06115

Telephone: 566-2203

D2

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER,

C.A. No H 75-310

Plaintiff

-v-

MOTION TO STRIKE AND BRIEF

PAUL B. CRIKELAIR ET AL

MAY 21st, 1976

\* \* \* \* \*

Plaintiff hereby moves the above Court on the first available motion day for its order pursuant to Rule 12 (f) FRCP striking the appearance of Daniel R. Schaefer and Barney Lapp both Assistant Attorney Generals and all documents filed by said Daniel R. Schaefer and said Barney Lapp including Answer and all motions and Brief on grounds;

1. Said Daniel R. Schaefer and Barney Lapp are illegally practicing law on behalf of Defendant JOHN P. COTTER, without authorization from the Connecticut State Legislature

---

STANLEY V. TUCKER

Certificate of Service By Mail

I, STANLEY V. TUCKER, hereby certify that on this 21st day of May 1976 I served the above motion and brief on defendants by mailing a true copy postage pre-paid by deposit in the U.S. mails at Hartford, Conn addressed:

Daniel R. Schaefer  
Barney Lapp  
Asst Attorney Generals  
30 Trinity Street  
Hartford, Conn

Justice John P. Cotter  
Connecticut Supreme Court  
Capitol Ave.  
Hartford, Conn.

E I

---

STANLEY V. TUCKER



BRIEF

FRCP RULE 12 (f) : "Upon motion of a party or upon the court's own initiative at any time, the court may order stricken ... any insufficient defense or any redundant, immaterial, impertinent, matter"

CONNECTICUT GENERAL STATUTE 3-125: DUTIES OF ATTORNEY GENERAL

"He shall appear for the state, the governor, the lieutenant governor, the secretary, the treasurer and the comptroller, and for all heads of departments and state boards, commissioners, agents, inspectors, committees, auditors, chemists, directors, harbor masters and institutions and for the state librarian in all suits and other civil proceedings..."

Argument: In this action two assistant attorney generals have illegally appeared for Defendant, JOHN P. COTTER, who is sued "in his individual capacity and as Chief Court Administrator for Connecticut" The two attorney generals do not dispute this and in fact confirm this by the captioning of every document filed in this court. However, the statutory limitations on the powers of the attorney general as established by the Connecticut Legislature do not sweep so wide a path as to include any state official in his individual capacity and in any event the Chief Court Administrator is not among the list of officials included under the shield of the services of the Attorney General.



Surely federal equal protection principles would require if the attorney general of Connecticut were to freely supply legal services in civil suits to state officials in their individual capacities and in addition those not included by the Connecticut Legislature why not have the attorney general provide on an equal call basis free legal services to all citizens and residents of Connecticut.

Surely this was never meant by the Conn. Legislature the the appearances, and all documents filed by these two assistant attorney generals should be stricken unless they first voluntarilly withdrawn. There is no reason why defendant JOHN P. COTTER, cannot appear pro se or seek counsel of his own chosing.

Respectfully

\_\_\_\_\_  
STANLEY V. TUCKER

E3



UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER

Plaintiff

vs.

PAUL B. CRIKELAIR, MARGIE J.  
THRELKELD, JEAN NEAL, ROBERT R.  
ANDERSON and JOHN P. COTTER,  
individually and in his capacity  
as Chief Court Administrator for  
Connecticut

Defendants

:  
:  
: CIVIL ACTION NO. H 75-310  
:  
:  
:  
: MOTION TO DISMISS, PURSUANT  
: TO RULE 12(b), F.R.C.P.  
:  
:  
: MAY 18, 1976

.....

Defendant, JOHN P. COTTER, individually and in his capacity  
as Chief Court Administrator for Connecticut, hereby moves the  
Court to dismiss the instant action pursuant to Rule 12(b),  
Federal Rules of Civil Procedure upon the following grounds:

1. The Complaint fails to state a claim against this  
defendant upon which relief can be granted.
2. The Complaint fails to demonstrate the jurisdiction  
of this Court over the subject matter.

D E F E N D A N T,  
JOHN P. COTTER, individually  
and in his capacity as Chief  
Court Administrator for Connecticut

Service certified  
pursuant to Rule 5b,  
F.R.C.P.

BY: CARL R. AJELLO  
ATTORNEY GENERAL

*Daniel R. Schaefer*  
Daniel R. Schaefer  
Assistant Attorney General  
30 Trinity Street  
Hartford, Connecticut 06115

*Daniel R. Schaefer*  
Daniel R. Schaefer  
Assistant Attorney General  
30 Trinity Street  
Hartford, Connecticut 06115

F1



UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER

Plaintiff

vs.

PAUL B. CRIKELAIR, MARGIE  
J. THRELKELD, JEAN NEAL,  
ROBERT R. ANDERSON and  
JOHN P. COTTER, individually  
and in his capacity as  
Chief Court Administrator  
for Connecticut

Defendants

.....

:  
:  
: CIVIL ACTION NO. H 75-310  
:  
:  
:  
: MEMORANDUM OF DEFENDANT COTTER  
: IN SUPPORT OF MOTION TO DISMISS

: MAY 18, 1976  
:  
:  
:

In this action the plaintiff challenges the various provisions of the Connecticut foreclosure statutes, Sections 49-14, 49-25, 49-27 and 49-28 on the basis of assorted due process and equal protection claims. Justice Cotter has evidently been sued in a nominal capacity on the basis that he supposedly enforces the provisions in question. Tucker alleges that various California residents, who are also defendants, have filed judgment liens on approximately fourteen (14) parcels of real estate owned by him. His constitutional claims are grounded in the anticipated enforcement of these liens.

Before we address the specific legal contentions of the plaintiff contained in paragraphs 5A through F, inclusive, it



would be helpful to discuss briefly the background and purpose of the statutes in question as well as their basic operation. Judgment liens may be foreclosed or redeemed in the same manner as mortgages. Section 49-46, General Statutes. This brings us to the mortgage foreclosure provisions. Under common law concepts a mortgage passed legal title to the mortgagee subject only to the performance of a condition subsequent, namely, payment by the mortgagor. In the event of non-payment on the specified date or dates, there was an automatic forfeiture so that the mortgagee then obtained absolute title free and clear. Courts of equity, however, looked to the intent rather than the form of mortgage transactions and alleviated the harsh consequences of non-payment. Notwithstanding the automatic forfeiture at law for non-payment, the mortgagor was provided with an equity of redemption. This took the form of an opportunity to pay the debt by a subsequent law day to be designated by the Court in spite of the previous default. This extension of time was based upon the equitable consideration that the severe common law forfeiture was, in essence, a penalty which equity should provide relief against. See generally, Louisville Joint State Land Bank v. Radford, 295 U.S. 555 at 578-9 (1935); Petterson v. Weinstock, 106 Conn. 436 at 441-2 (1927); 4 Pomeroy Equity Jurisprudence, 5th Ed. (1941) Sec. 1179 at p. 521, Sec. 1180 at p. 523, and Sec. 1181 at p. 524.



On the basis that equity treats everything done which in good conscience ought to be done, the mortgagor was deemed to have the right to compel reconveyance and redelivery of the property at any time upon payment of the debt. The mortgagee was considered to have legal title only for the purposes of security. As against all other persons, the mortgagor was held to be the legal owner for all intents and purposes. 2 Pomeroy, supra, Sec. 376 at p. 388; 4 Pomeroy, supra, Sec. 1187 at p. 533. Thus, even in a "title" state such as Connecticut the nature of the property interests has been recognized as follows:

"...While the mortgagee holds the legal title to the land he is regarded in equity as doing so only for the purpose of securing the payment of the debt...."

Desiderio v. Iadonisi, 115 Conn. 652 at 654 (1932).

See also: State v. Stoneybrook, Inc., 149 Conn. 492 at 496 (1962),  
Hartford Realization Co. v. Travelers Insurance Co., 117 Conn. 218 at 224 (1933).

Originally, mortgages were enforceable by the mortgagee by strict foreclosure. Upon the failure of the mortgagor to redeem by the designated law day, the equity of redemption was extinguished and the mortgagee became absolute owner. The mortgagee could not seek any deficiency judgment in the foreclosure proceeding. Instead, any loss he sustained based upon the difference between the debt and the value of the property foreclosed could only be recovered in a separate action on the debt. The need to resort to a separate action, however, was



eliminated by the Legislature by the passage of Chapter 18 of the Public Acts of 1833. This provision allowed the mortgagee to obtain a deficiency judgment in the strict foreclosure proceeding itself. This statutory provision has been considered as a necessary correction in light of equitable principles so that complete justice and unity of relief could be provided in one proceeding and a multiplicity of suits avoided, if possible. See generally, Beach v. Isacs, 105 Conn. 169 at 170 (1926); Equitable Life Assurance Society v. Slade, 122 Conn. 451 at 454 (1937). It is further noted that a foreclosure of a mortgage is now a bar to any further action upon the mortgage debt against all persons who are liable for the payment and who are either made parties to the foreclosure or who could have been made parties. See Section 49-1, Conn. Gen. Stat.

In addition, in a foreclosure proceeding the Court in its discretion may order that the mortgage be foreclosed by a decree of sale instead of strict foreclosure. Section 49-24 et seq., Conn. Gen. Stat. A supplemental judgment is then rendered specifying the parties entitled to a disbursement of the funds. Section 49-27, Conn. Gen. Stat.<sup>1</sup> For general history and operation of the mortgage foreclosure statutes see Comment, Connecticut Mortgage Foreclosure: Deficiency Judgments And Problems Of Subsequent Encumbrancers, 2 Conn. L.Rev. 413 (1969-70); Note An Act Concerning The Foreclosure Of Mortgages, 32 Conn. Bar J. 200 (1958). We have set forth this background in some detail

---

N.1. The foreclosure by sale provisions were first enacted as §§ 2 and 6 of Ch. 109 of the Public Acts of 1887. Cronin v. Gager-Crawford, 120 Conn. 688 at 694 (1942).



because the arguments raised by the plaintiff can be properly evaluated in light of the history of these provisions.

1. PLAINTIFF'S CLAIM THAT SECTION 49-14, CONN. GEN. STAT. DOES NOT PERMIT DEFICIENCY JUDGMENTS IN FAVOR OF THE DEFENDANT (¶5A, COMPLAINT).

We now turn to the specific allegations in the Complaint. In paragraph 5A the plaintiff contends that Section 49-14, Conn. Gen. Stat., is unconstitutional

"because it permits deficiency judgments for plaintiffs where the claim exceeds the appraisal but does not permit deficiency judgments in favor of the defendant where the appraisal exceeds the claim."

It is well recognized that "the procedure by which rights may be enforced and wrongs remedied is peculiarly a subject of state regulation and control." Hardware Dealers Mutual Fire Insurance Co. v. Glidden Co., 284 U.S. 151 at 158 (1931). It is also well established that a person has no vested interest in any one rule of law. Consistent with due process requirements, property rights are subject to reasonable state regulation. Munn v. Illinois, 94 U.S. 113 at 134 (1871). As to equal protection,

"[T]he Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways, Barbier v. Connolly, 113 U.S. 27 [5 S.Ct. 357, 28 L.Ed. 923] (1885); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 [31 S.Ct. 337, 55 L.Ed. 369] (1911); Railway Express Agency v. New York, 336 U.S. 106 [69 S.Ct. 463, 93 L.Ed. 533] (1949); McDonald v. Board of Election Commissioners, 394 U.S. 802 [89 S.Ct. 1404, 22 L.Ed. 2d 739] (1969)...."

Reed v. Reed, 404 U.S. 71 at 75 (1971).

F6



"The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal...."

McDonald v. Board of Election Commissioners,  
394 U.S. 802, 808-809 (1969).

"The problems of government are practical ones and may justify, if they do not require, rough accommodations,--illogical, it may be, and unscientific."

Metropolis Theatre Co. v. Chicago,  
228 U.S. 61, 69-70 (1913).

See also: New York Central Railway Co.  
243 U.S. 188 at 201, 202 (1916);  
Gentile v. Altermatt, Conn., 37 Conn.  
L.J. No. 6, Aug. 5, 1975, p. 1, Appeal dis-  
missed, 96 S.Ct. 763-4 (Jan. 12, 1976).  
(upholding the constitutionality of  
the Connecticut "no-fault" law,  
§§ 38-319 et seq.)

In a strict foreclosure proceeding the mortgagor's interest in redeeming the property is considered by the Court when it sets a law day by which payment must be made. In setting the law day the Court will consider the value of the mortgaged premises when compared with the debt. Both parties have a right to offer testimony on the issue of value, subject to cross-examination and the usual evidentiary rules. If the value of the premises substantially exceeds the mortgage debt, the mortgagor will be given a longer period in which to redeem. This would permit him to either obtain refinancing if possible or to sell the property itself on the open market and retain the difference



between the proceeds and the mortgage debt. This procedure is considered more advantageous to both parties in comparison with an immediate, court ordered sale under distressed conditions.

This procedure was discussed by the State Supreme Court in Brand v. Woolson, 120 Conn. 211 (1935).

"In most jurisdictions the foreclosure is by a sale of the property and the time for redemption is fixed by statute. In this jurisdiction, except when, upon written motion, the court in its discretion decrees a sale, a mortgage is foreclosed by strict foreclosure, and the time for redemption is fixed by the court. Though this has been characterized as a severe remedy, it has been considered 'more convenient and equitable to give the party himself a reasonable time to effect a sale which can probably be done by him at a much greater advantage than by a forced sale at auction.' 2 Swift's Digest, 198.

"The procedure has always been that outlined by CHIEF JUSTICE SWIFT: 'On an application for a foreclosure the court will ascertain the sum that is due on the mortgage, and enquire into the value of the mortgaged premises, and will limit a time for redemption having regard for the value of the [mortgaged] premises when compared with the debt. If the land is worth about the amount of the debt or less, they will give but a short time; if the value of the land considerably exceeds the debt, so that it is an object to redeem, they will give a proportional time according to the circumstances of the case to prevent a sacrifice of the property; but no precise period has been established.' 2 Swift's Digest, 197.

"The flexibility of the procedure which permits the court to exercise its discretion in fixing the law day as to protect the rights of all parties modifies any severity that may be thought to inhere in this method of foreclosure. The discretion exercised by the court in fixing the law day in a foreclosure is a legal discretion.



Its exercise will not be interfered with on appeal to this court except in a case of manifest abuse and when injustice appears to have been done. *Hayward v. Plant*, 98 Conn. 374, 382, 119 Atl. 341. When it appears that there is an equity in the mortgaged property so that it is an object for the mortgagor to redeem, the court in fixing the law day may properly take into consideration the probability that the necessary money can be procured within the time limited for redemption. The difficulty of raising money, under existing conditions, upon any kind of security, is a matter of common knowledge. If an 'emergency may furnish the occasion for the exercise of power,' as was said in *Home Building & Loan Assn. v. Blaisdell*, 290 U. S. 398, 426, 54 Sup. Ct. 231, upholding a Minnesota statute providing for an extension of the statutory time for redemption of a mortgage, it may well furnish the occasion for an exercise of discretion in fixing a law day beyond a time which the court would feel justified in granting under normal conditions...."

Id. at 214-215.

Furthermore, where the equity in the property exceeds the mortgage debt the Court also in its discretion may authorize foreclosure by sale upon the motion of any party. Section 49-24, Conn. Gen. Stat.; *Bradford Realty Corp. v. Beetz*, 108 Conn. 26 at 31 (1928). However, because of the additional expense and unfavorable sale conditions, this procedure is resorted to less frequently than strict foreclosure.

In summary, the excess equity of the mortgagor is protected by the discretion of the Court in designating the law day for equity of redemption as well as the alternative of judicial sale.



2. PLAINTIFF'S CLAIM THAT SECTION 49-14  
PRECLUDES A JURY TRIAL AND THE PRESENTATION  
OF EVIDENCE AS TO VALUE (¶ 5B OF COMPLAINT).

Plaintiff next argues that Section 49-14, Conn. Gen. Stat.,  
is unconstitutional

"...by precluding a jury trial as to value  
and by precluding the introduction of testi-  
mony, presentation of witnesses and the right  
to confront witnesses and to cross-examine  
witnesses as to value."

a. JURY TRIAL.

We will first discuss the jury trial question. It  
is well established that the Seventh Amendment of the  
United States Constitution, preserving a right of jury trial  
in suits at common law, does not apply to the states. Minneapolis  
and St. Louis Railway Co. v. Bombolis, 241 U.S. 211, 217 (1916);  
See also Brady v. Southern Railway Co. 320 U.S. 476, 479 (1943);  
Hardware Dealers Mutual Fire Insurance Co. v. Glidden, supra,  
284 U.S. at 158 (1931); Mountain Timber Co. v. Washington,  
243 U.S. 219 at 235 (1916).

Although the Court has held that the Sixth Amendment  
of the Federal Constitution, concerning the right to jury  
in criminal proceedings, is incorporated in the due process  
clause of the Fourteenth Amendment, it has also emphasized the  
distinction between criminal and civil cases for this purpose.  
Duncan v. Louisiana, 391 U.S. 145 at 155 (1968). It has  
been uniformly recognized that the Seventh Amendment is not  
extended to the states by the "incorporation" doctrine.  
Melancon v. McKeithen, 345 F.Supp. 1025 (E.D. La. 1972, 3-judge  
District Court, Wisdom, J.), Aff'd 409 U.S. 943 (1972 ). In

F10



fact, the Supreme Court has recently noted:

"The Court has not held that the right to jury trial in civil cases is an element of due process applicable to state courts through the Fourteenth Amendment...."

Curtis v. Loether, 415 U.S. 189 at 192, N.6 (1974).

See also: Colgrove v. Battin, 413 U.S. 149, 169, N.4 (1973), Marshall, J. dissenting.

Concerning the right to jury under State law, it is generally recognized that the jury rights preserved under Article First, Section 19, of the Connecticut Constitution, as amended by Article IV, apply only to actions triable to a jury at the time of the adoption of the 1818 Constitution. Gentile v. Altermatt, supra. Similarly, the statutory restatement of these provisions excludes from the jury requirement actions involving a question "properly cognizable in equity...." Section 52-215, Conn. Gen. Stat. See also II Stevenson, Connecticut Civil Procedure (2d Ed. 1971), Section 175e, pp. 693-696.

The fact that monetary relief is claimed in a foreclosure proceeding does not itself entitle the litigants to a jury trial.

"[W]here the essential right asserted is equitable in its nature and damages are sought in lieu of equitable relief or as supplemental to it in order to make that relief complete, the whole action is one in equity and there is no right to a jury trial." Berry v. Hartford National Bank & Trust Co., supra, 618, 619."

Savings Bank of New London v. Santaniello, 130 Conn. 206 at 210 (1943), involving a mortgage action. See also Pernell v. Southall Realty, 416 U.S. 371 at 375-376 (1974).

F11



Even with the addition of the statutory right to a deficiency judgment in foreclosure, the following principle was well established:

"In a suit to foreclose a mortgage the court will ordinarily treat the case as a unity, and as one of exclusive equitable jurisdiction.

1 Pomeroy, Equity Jurisprudence, supra, Sec. 2401, p. 450.

Thus, it has been specifically held that the right to a jury trial under state constitutional provisions comparable to Connecticut's does not apply to mortgage foreclosure proceedings even where a deficiency judgment is sought. Jamaica Savings Bank v. M. S. Investing Co., Inc., et al, 274 N.Y. 215, 8 N.E. 2d, 493 (1937), wherein the Court stated:

"An action to foreclose a mortgage is an action in equity.. As incidental to the main relief sought, the court ever since 1830 may award judgment for the deficiency after sale. This relief is purely incidental, and a complaint asking such relief states only one cause of action. In Reichert v. Stilwell, 172 N.Y. 83, 88, 64 N.E. 790, 792, the court said: 'An action to foreclose a mortgage is not an action to recover the mortgage debt from the mortgagor personally, but to collect it out of the land by enforcing the lien of the mortgage....The Revised Statutes authorize the court in an action of foreclosure to render judgment against the person liable for the mortgage debt for any deficiency that may remain after selling the land and applying the proceeds. \* \* \* That, however, is not a distinct and independent cause of action, but is an incidental remedy, dependent wholly upon the statute and subsidiary to the main object of the action.'"

Id. at 494.



Further, it is significant that these considerations apply in original federal actions.

"Since a foreclosure action is equitable and the granting of a deficiency judgment is an incident of the equitable jurisdiction, it follows that there is no right of jury trial as to the plaintiff's claim including his right to a deficiency judgment....The action of the Court is consistent only with the proposition that equity having taken jurisdiction of the foreclosure suit should have jurisdiction to determine the incidental matter of a deficiency judgment and that there is no right of jury trial on any of these issues...."

5 Moore's Federal Practice, (2d Ed. 1976) ¶38.38[4] at pp. 308.12-308.13.

See also: Judge Friendly's extensive analysis in Damsky v. Zavatt, 289 F.2d 46 at 53-55 (2d Cir. 1961) and Shepherd v. Pepper, 133 U.S. 626 at 652 (1890).

See generally 3 Jones, Mortgages, § 1840 at p. 318 (1928); 1 Glenn, Mortgages, (1943), §§ 60, 77.1, 89.1.

Wholly aside from these principles, it should also be noted that in Connecticut the Court in its discretion may order that issues of fact in any equitable proceeding should be tried by a jury. 1 Connecticut Practice Book (1975), Sec. 243; Sec. 52-218, Conn. Gen. Stat.

In summary, there is no cognizable right, federal or otherwise, to a jury trial where a deficiency judgment is sought in a foreclosure case, even though the Court in its discretion may refer certain fact questions to a jury if deemed appropriate.



b. PRESENTATION OF EVIDENCE  
AND CROSS-EXAMINATION.

Plaintiff also attacks the constitutionality of Section 49-14, Conn. Gen. Stat., on the basis that it does not permit the presentation of evidence as well as cross-examination on the question of value. This provision states that the appraisal "shall be final and conclusive." The appraisal report is submitted by three "disinterested appraisers" under oath who are appointed by the Court. Section 49-14. The background and operation of this provision was discussed in Equitable Life Assurance Society v. Slade, supra, 122 Conn. at 454-459. Originally, the determination of value was a function of the Court itself. This duty was transferred to the three disinterested appraisers by Section 2 of Chapter 129 of the Public Acts of 1878. The appraisers are deemed to act in a "quasi-judicial capacity." Id. at 455. A remonstrance lies against their report for any irregularity. It is true that alleged errors of judgment as to the value of the property cannot be reviewed in the remonstrance. However, mistakes of fact or law which substantially affected the property appraisal may be considered. Id. at 459.

"In no case can an appraisal so determined be set aside in the absence of a showing of some serious mistake of fact or the adoption of an erroneous principle of law which substantially affected it as made by the three considered as a joint board...."

Id. at 458.

This analysis of the Court's limited function in reviewing an appraisal report in a foreclosure proceeding is consistent with the principles stated in 2 Wiltsie, Mortgage Foreclosure,



(5th Ed. 1939), Section 647 at pages 1048-1050.

The constitutionality of this procedure was specifically upheld in Buck v. Morris Park, Inc., 153 Conn. 290 (1965), a claim of unconstitutionality similar to that in the present case was made. The Court first recognized that the appraisal was a quasi-judicial act distinct from the function of a committee in assessing damages in eminent domain. The Court then stated:

"...An appraiser sets a value on property at his estimate of what it is worth. Beach v. Trumbull, 133 Conn. 280, 290, 50 A.2d 765; Cocheco Mfg. Co. v. Strafford, 51 N.H. 455, 482; McAdams v. Bolsinger, 57 Ohio Op. 338, 340, 129 N.E.2d 878. The appraisers determine the value of property upon their own experience and judgment. Consequently, they are not required to hear evidence or to give notice of the meeting at which they make the appraisal. Vincent v. German Ins. Co., 120 Iowa 272, 278, 94 N.W. 458.

"General Statutes §49-14 provides that the appraisal made thereunder shall be final and conclusive as to the value of the mortgaged property. Upon a remonstrance being filed, the power of the court to review the question of value is limited to questions of law. Equitable Life Assurance Society v. Slade, 122 Conn. 451, 456, 190 A. 616. The constitutional due process requirements are satisfied where the complainant has had reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it. Doherty v. Rogers, 281 U.S. 362, 369, 50 S. Ct. 299, 74 L. Ed. 904; Missouri ex rel. Hurwitz v. North, 271 U.S. 40, 42, 46 S. Ct. 384, 70 L. Ed. 818; Proctor v. Sachner, 143 Conn. 9, 17, 118 A.2d 621. It must be born in mind that this was an action for the foreclosure of a mortgage on the defendant's property. The mortgage was the security for the money loaned to the defendant. It appeared and participated in the foreclosure. It obtained an



extension of the law day by stipulation with the plaintiff and had the opportunity to redeem but did not do so. It had notice of the appointment of the three appraisers and in fact nominated one of those selected. It also had notice of the motion for deficiency judgment and was fully heard on its remonstrance to the acceptance of the appraisers' report. Nothing more was required to protect the rights of the defendant. The due process clause in the federal constitution does not guarantee any particular form or method of state procedure to the citizens of the state. *Proctor v. Sachner, supra.*"

Id. at 293-294.

It is significant that the United States Supreme Court dismissed an appeal which was taken from this decision for want of a substantial federal question. 385 U.S. 2 (1966) (per curiam). See also Hardware Dealers Mutual Fire Insurance Co. v. Glidden Co., supra, 284 U.S. 151.

3. PLAINTIFF'S CLAIM THAT SECTION 49-25  
PRECLUDES A JURY TRIAL AND THE PRESENTATION  
OF EVIDENCE AS TO VALUE (¶ 5C OF COMPLAINT).

Plaintiff's attack on Section 49-25, Conn. Gen. Stat., concerning foreclosure by sale is virtually identical to that made to Section 49-14 above. As to the jury trial question, it is well recognized that a foreclosure by sale is also an equitable action. City Savings Bank v. Lawler, 163 Conn. 149 at 155 (1972); Mariners Savings Bank v. Duca, 98 Conn. 147 at 152 (1922). Therefore, there is no right to a jury trial for reasons stated above.

In respect to the issue of presentation of evidence, it is noted that Section 49-25 contains no language that the appraisal is final and conclusive. Therefore, it has been held that the

F16



appraisal is not binding upon the Court in this situation. Cronin v. Gager-Crawford Co., 128 Conn. 683 at 692 (1942). It would thus appear that the Court is not precluded from hearing evidence on this issue. Furthermore, the value of the property for the purpose of the deficiency is determined by the purchase price at the foreclosure sale. The appraisal is utilized only for the purpose of providing an additional credit to the mortgagor as we shall discuss more fully below, as well as for determining whether the sale should be ratified. See Id. at 695; Section 49-28, Conn. Gen. Stat. Finally, the Court has the power to disapprove a sale "if found to be unfair or inequitable to any of the parties." Cronin v. Gager-Crawford Co., supra, at 693; Mariners Savings Bank v. Duca, supra, at 152-156.

Presumably evidence could be taken on this point also.

4. PLAINTIFF'S CLAIM THAT SECTION 49-27  
REQUIRES THE PLAINTIFF TO BRING INTO  
COURT ONLY THE PROCEEDS EXCEEDING  
THE DEBT (¶ 5D OF COMPLAINT).

This is a challenge to that portion of Section 49-27, Conn. Gen. Stat., which provides that if the plaintiff is the purchaser at the foreclosure sale, "[H]e shall be required to bring into court only so much of such proceeds as exceed the amount due upon his judgment debt, interest and costs." This is only a bookkeeping provision which avoids the need for the plaintiff to first pay the amount of his judgment debt at the sale only to have it returned again on disbursement of the sale proceeds. In fact, the portion which the plaintiff pays into Court would generally represent any excess of the sale price of the debt and thus be subject to apportionment among other parties, including the mortgagor.



Contrary to Tucker's assertions, the mortgagor is not required to "bring" into Court anything. He had already obligated himself to payment of the mortgage debt.

5. PLAINTIFF'S ATTACK UPON THE FIFTY PER CENT CREDIT IN SECTION 49-28 (¶ 5E OF COMPLAINT).

The only portion of this allegation which requires any comment is the claim that Section 49-28, Conn. Gen. Stat., "does not permit deficiency judgments to have deducted the full loss sustained by defendants where the sales price is less than the appraisal but only requires one/half of the difference between selling price and the appraised value to be deducted from the debt or deficiency judgment." It is obvious that this statute is remedial and seeks to compensate the mortgagor for at least part of the loss sustained by a forced auction sale requested by the mortgagee. As stated by the Court in Cronin v. Gager-Crawford Co., supra,

"...It is just and equitable that the party who asks and obtains an order of sale in place of a decree of strict foreclosure, with the resultant sacrifice of value which a sale is likely to involve, if he seeks a deficiency judgment should bear a part of the value sacrificed by the forced sale. North End Bank & Trust Co. v. Mandell, 113 Conn. 241, 245, 155 Atl. 80...."

Id. at 691-692.

It is recognized that the value obtained by a compulsory liquidated sale may very well be less than that which could be realized upon a more orderly disposition by the mortgagee after a strict foreclosure decree. See Staples v. Hendrick, 89 Conn. 100 at 106-107 (1915). For these reasons, the constitutionality of statutes such as Section 49-28 has been well established. Honeyman v. Jacobs, 306 U.S. 539 (1938); Gelfert v. National City Bank, 313 U.S. 221 (1941).

F18



6. FURTHER ALLEGATION OF UNCONSTITUTIONALITY (¶ 5F OF COMPLAINT).

This allegation is merely surplusage.

\* \* \* \* \*

It is noted that to the extent that any assertions by Tucker involve any interpretation of statutes which have not yet been given by the State Courts, abstention would be proper. Spector Motor Service v. McLaughlin, 323 U.S. 101 (1944); Reetz v. Bozanich, 397 U.S. 82 (1970); Fornaris v. Ridge Tool Company, 400 U.S. 41 (1970). It would also appear appropriate for both the plaintiff and the other defendants to inform the Court of the status of any present foreclosure proceedings to enforce the judgment liens or any mortgages for that matter in respect to the properties in question. This would be of obvious relevance from the standpoint of principles of federalism, comity and equity which might also warrant abstention in this case. See Mitchum v. Foster, 407 U.S. 225 at 245 (1972) (concurring opinion of Burger, C.J.); Huffman v. Pursue, \_\_\_\_\_ U.S. \_\_\_\_\_, 95 S.Ct. 1200 (March 18, 1975).

\* \* \* \* \*

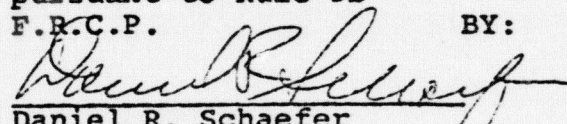
It is, therefore, respectfully submitted that the Complaint should be dismissed.

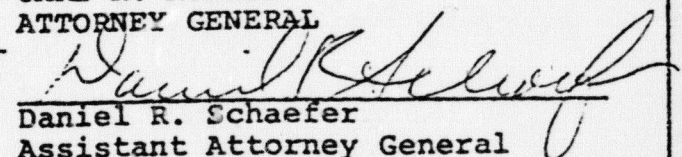
DEFENDANT, JOHN P. COTTER,  
individually and in his capacity  
as Chief Court Administrator for  
Connecticut

Service certified  
pursuant to Rule 5b  
F.R.C.P.

BY:

CARL R. AJELLO  
ATTORNEY GENERAL

  
Daniel R. Schaefer  
Assistant Attorney General  
30 Trinity Street  
Hartford, Connecticut 06115  
Telephone: 566-2203

  
Daniel R. Schaefer  
Assistant Attorney General  
30 Trinity Street  
Hartford, Connecticut 06115

F19



-v-

PAUL B. CRIKELAIR,  
ET AL.

Defendants

PLAINTIFF'S BRIEF IN  
OPPOSITION TO MOTION  
TO DISMISS BY DEFENDANT  
JOHN P. COTTER

June 5th, 1976

\* \* \* \* \*

Introduction: The defendant's motion to dismiss is filed too late without stipulation or agreement and without approval of the court. While defense counsel filed a motion for enlargement of time to May 13, 1976 to file his motion to dismiss yet no action has yet been taken by the court to approve or disapprove said motion and in any event the enlargement to May 13th would not cover a motion dated May 18th, 1976.

FRCP RULE 12 - "a motion making these defenses shall be made before pleading...."

The record shows the "appearance" of defense counsel on October 9th, 1975 with Answer dated the same date.

THE MOTION TO DISMISS IS FILED A HALF YEAR TOO LATE VI LATES THE RULES AND ON THOSE GROUNDS SHOULD BE DENIED!

However, in an excess of caution Plaintiff addresses the argument below in opposition to the brief of Defendant, (JOHN P. COTTER.

I. ALLEGATIONS OF VERIFIED COMPLAINT PETITION FOR SPEEDY APPOINTMENT OF THREE-JUDGES TO HEAR CONSTITUTIONAL CHALLENGE TO CONNECTICUT'S FORECLOSURE STATUTES

The verified complaint file stamped Sept 25th, 1975 and the "Brief in Support of Application for Three-Judge Court" dated November 10th, 1975 adequately brief the federal law pertinent namely that a single judge has no jurisdiction but a three-judge court alone has power to hear the constitutional questions. Idlewild Bon Voyage Liquor Corp v Rohan 289 F 2d 426. Goosby v Osser 409 US 512 on P 518 set the standard for determining the threshold



question of "substantiality" of the federal issues requiring a showing of:

Goosby. Supra. P 518:

"Constitutional insubstantiality" for this purpose has been equated with such concepts as "essentially fictitious" *Baily v Patterson* 369 U. S. at 33; "wholly insubstantial," *ibid*; "obviously frivolous" *Hannis Distilling Co v Baltimore* 216 U S 285 ( 1910); and "obviously without merit" *Ex Parte Poresky* 290 US 30. The limiting words "wholly" and "obviously" have cogent legal significance. In the context of the effect of prior decisions upon the substantiality of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purpose of 28 USC 2281. A claim is insubstantial only if "its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy." *Ex Part Poresky, supra, p 32.*

A. DEFENDANT'S BRIEF FAILS TO MEET THE GOOSBY TEST  
AND MUST BE RESERVED FOR DECISION BY A THREE-JUDGE COURT

Continued careful re-reading of defenant's brief shows a factual confirmation of Plaintiff's factual claims as set forth in the brief, namely the denial of equal procection and invideous discrimination against the poor as a class by favored or preferential state law foreclosure practices to fatten the rich (mortgage & lien holders) while starving the poor. The case of Brand v Woolson 120 Conn 211 1935 quoted extensively



on Page 7 of Defendant's Brief makes crystal clear that the sole power exercised by Connecticut state courts to avoid this invidious discrimination is in the selection of the "law date".... "they will give a proportional time according to the circumstances of the case to prevent a sacrifice of the property..."

The key words (underline added) above are "sacrifice of the property" as it is a sacrifice indeed to undergo a foreclosure action in the State Courts of Connecticut under times of economic distress (unemployment and lack of mortgage money at reasonable rates) such as have plagued the American economy going on into the third year.

But such is prohibited by the federal constitution! Nowhere in his brief does Defendant demonstrate any compelling state interest in a mortgage foreclosure to justify "sacrifice of the property" (very words of Conn. Supreme Court) of the poor to pay off the secured claims of the rich.

B. THE RIGHT TO A JURY TRIAL ON STATUTORY FORECLOSURE ACTIONS HAS NOT BEEN RESOLVED BY ANY CASE DEFENDANT CITES

Of some greater interest to this Court may be the cases cited by Defendant of which none precisely resolves the claims of Plaintiff. If anything the brief shows that the issue of right to a jury trial has been hotly litigated for centuries in both state and federal forums with the decisions reversed by the Courts of Appeal and again by the UNITED STATES SUPREME COURT. The final decision of the highest court has used historical analysis of the right to



a jury trial in the context of the state constitution and/or the statutory rights litigated. This analysis becomes most clear on rereading of defendant's brief in light of the latest decision of the U. S. SUPREME COURT. Pernell v Southall Realty 416 US 371 (1974) In Pernell the District Court struck the jury claim in a suit for possession of real property with counter-claims and was upheld by the Court of Appeals but in a detailed reasoned opinion the U.S.SUPREME court reversed.

Page 379: "This Court has long assumed that actions to recover land, like actions for damages to a person or property are actions at law triable to a jury. Whitehead v Shattuck 138 US 146."

Page 371 : "The various forms of actions which the common law developed for the recovery of possession of real property were also actions at law in which the trial by jury was afforded.."

The constitutional right to a jury trial in Connecticut if the right to possession of land was disputed was long clear.

Miller & Co v Lampson 66 Conn 432 1995

P 433: "A man's right to possession of real estate.... was entitled to trial by jury"

The foreclosure action by its nature once completed transferred both title and possession to the foreclosing party.

In summary the sheer volume of cases cited by Defendant all showing hotly contested the right to a jury trial with reversals up to the highest court in the land makes clear that this question should be properly reserved for a three-judge District Court for taking of testimony and further briefing.

CONCLUSION: The Defendants brief supports the position of Plaintiff that the matters at issue should be properly assigned to a Three-Judge District Court.

G4

Respectfully Submitted:

S.V. TUCKER



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER :  
v. : CIVIL NO. H-75-310  
PAUL B. CRIKELAIR, ET AL. :

MEMORANDUM OF DECISION

The plaintiff in this pro se civil rights action, Stanley V. Tucker, is no stranger to this court. This lawsuit is another in his continuing effort to delay, and perhaps prevent, the enforcement of state and federal judgments entered against him in California.<sup>1/</sup> Here Mr. Tucker challenges the constitutionality of the Connecticut statutes

1/

The California judgments, arising out of the property distribution attendant upon plaintiff's divorce proceedings and a malicious prosecution action, were registered in this court. Threlkeld v. Tucker, Civil No. 14,887 (D. Conn. Feb. 10, 1972) [\$51,667.76]; Neal v. Tucker, Civil No. 15,291 (D. Conn. Sept. 5, 1972) [\$25,141.70]; Crikelair v. Tucker, Misc. N.H. No. 41 (D. Conn. July 26, 1974) [\$19,913.08]. Perhaps from an abundance of caution, engendered by Mr. Tucker's litigiousness, Margie Threlkeld re-registered her judgment for \$51,667.76. Threlkeld v. Tucker, Misc. N.H. No. 40 (D. Conn. July 26, 1974). An action seeking foreclosure of these liens is still pending in this court. Anderson v. Tucker, Civil No. H-74-364.

The cases Mr. Tucker has brought in furtherance of his effort to prevent execution of the California judgments are: Tucker v. Anderson, Civil No. 13,787 (D. Conn. Nov. 6, 1972) (dismissed), aff'd, (2d Cir. Feb. 28, 1974); Tucker v. Neal, Civil No. H-8 (D. Conn. March 6, 1973) (dismissed), aff'd, (2d Cir. Aug. 6, 1974); Tucker v. Neal, Civil No. H-217 (D. Conn. Dec. 10, 1973) (stay entered); Tucker v. Meskill, Civil No. H-74-358 (D. Conn. April 18, 1975) (dismissed), aff'd, (2d Cir. Jan. 12, 1976). The factual and procedural history of these California judgments is set forth in two of this



governing foreclosures on mortgages and liens.<sup>2/</sup> He seeks damages against the private defendants, holders of the judgment liens discussed in note 1 supra, and declaratory and injunctive relief against them and the Honorable John P. Cotter, Justice of the Connecticut Supreme Court and the Chief Court Administrator for the State of Connecticut.<sup>3/</sup> Mr. Tucker has moved for the designation of a three-judge district court,<sup>4/</sup> pursuant to 28 U.S.C. § 2284(4), to hear his constitutional challenge to these statutes.

1/ cont'd

court's decisions. Anderson v. Tucker, 68 F.R.D. 461 (D. Conn. 1975); Tucker v. Neal, Civil No. H-8 (D. Conn. Mar. 6, 1973). As described therein, it is clear that plaintiff's damage claim, based on these "phoney Judgments" [sic], is frivolous, and borders on malicious prosecution.

Mr. Tucker has also filed several related suits: Tucker v. Connecticut Mason Contractors, Inc., Civil No. 13,785 (D. Conn. Nov. 6, 1972) (dismissed), aff'd, (2d Cir. Feb. 28, 1974); Tucker v. Maher, Civil No. 13,786 (D. Conn. Nov. 6, 1972) (dismissed), aff'd, 497 F.2d 1309 (2d Cir. 1974); Tucker v. Moller, Civil No. 13,912 (D. Conn. Oct. 1, 1970) (dismissed), aff'd, 445 F.2d 1400 (2d Cir. 1971).

Mr. Tucker has also appeared before this court as plaintiff in six civil cases and as defendant in two; all eight are unrelated to the California controversy.

2/  
Conn. Gen. Stat. Ann. §§ 49-14, 25, 27, and 28.

3/  
Justice Cotter is sued as an individual and in his official capacity as Chief Court Administrator.

4/  
Mr. Tucker's requests for designation of three-judge district courts have been denied in all five of the cases listed in note 1 supra, in which he has moved for three judges. He has one further such request pending at the present time.



the statutes challenged in this action set forth the  
provisions for the appraisal of property foreclosed pursuant  
to liens or mortgages, the disposal of the proceeds of such  
foreclosure sales, and the entry of deficiency judgments where  
the proceeds are insufficient to pay off the claims. The  
plaintiff claims<sup>5/</sup> that this statutory scheme violates his  
rights under the due process and equal protection clauses of  
the fourteenth amendment in two ways.<sup>6/</sup> First, he claims that  
it necessarily causes "favored treatment of plaintiffs over  
defendants."<sup>7/</sup> Second, since "[i]t hardly needs saying that  
Plaintiffs as a 'class' in foreclosure action [sic] are rich  
as a group . . . [and] . . . [t]he Defendants in a foreclosure  
action are usually the poor and the oppressed,"<sup>8/</sup> he contends  
that the statutes "arbitrarily [sic] divide citizens and  
discriminate against the poor (defendants) as a class for no  
useful state purpose."<sup>9/</sup>

Both of the plaintiff's attacks on these statutes rest  
on his assertion that these statutes grant "advantages of an

---

<sup>5/</sup> In his Brief In Support Of Application For A Three-Judge  
Court.

<sup>6/</sup> As is clear from his brief, Mr. Tucker's claims actually  
rest entirely upon the equal protection clause.

<sup>7/</sup> Brief of Plaintiff, at 4.

<sup>8/</sup> Brief of Plaintiff, at 5.

<sup>9/</sup> Brief of Plaintiff, at 7.



economic nature . . . to 'plaintiff' litigants in foreclosures as against the defendants as a class."<sup>10/</sup> He claims that this discrimination results because the statutes "giv[e] Plaintiff' [sic] deficiency judgments while the equal right is denied to Defendants where the sale is below the appraised market value."<sup>11/</sup> However, this charge reflects a misreading of the statutory arrangement. Both §§ 49-14 and 49-28 Conn. Gen. Stat. Ann. protect defendants in precisely the situation hypothesized by Mr. Tucker. Section 49-14 provides that "such appraisal shall be final and conclusive as to the value" of the property. And, if the mortgage is not fully satisfied, § 49-14 explicitly provides that the creditor "shall recover only the difference between the value of the mortgaged property as fixed by such appraisal and the amount of his claim . . . ." Thus, in strict foreclosure proceedings, where § 49-14 is applicable, defendants are obviously fully protected by the very Connecticut statute plaintiff challenges.

Where one of the parties has moved for foreclosure by a decree of sale rather than for strict foreclosure, in accordance with § 49-24, Conn. Gen. Stat. Ann., the appraisal of property and disposal of proceeds are governed, in part, by the remaining statutes challenged by Mr. Tucker, §§ 49-25, 27, and 28. Section 49-28 provides that, where the property

---

<sup>10/</sup> Brief of Plaintiff, at 5.

<sup>11/</sup> Brief of Plaintiff, at 7.



has been sold below its appraised value, the defendant is protected from a deficiency judgment, and all other collection activity, "until one-half of the difference between such appraised value and such selling price has been credited" to the defendant's debt. This statute created somewhat more flexibility in the foreclosure-by-sale process than existed under the older strict foreclosure system. As the Supreme Court of Connecticut has pointed out, in the foreclosure-by-sale procedure the appraiser's valuation is intended only to guide the court, because under this procedure "the value of the property at the time of sale is to be determined by the price paid at the sale . . . ." Cronin v. Gager-Crawford Co., 128 Conn. 688, 695, 25 A.2d 652 (1942). Furthermore, it was held in Bryson v. Newtown Real Estate & Development Corporation, 153 Conn. 267, 274, 216 A.2d 176 (1965), that the court may hold a hearing and take evidence relating to the value of the property sought to be disposed of, because in a foreclosure by sale it is the court's evaluation which "cannot be disturbed." Id., at 274.

Thus, Mr. Tucker's claim that defendants are discriminated against where sales occur below the appraised value of property also misunderstands the nature of foreclosure by sale in Connecticut. It is essentially an equitable proceeding, Mariners' Savings Bank v. Ducca, 98 Conn. 147, 118 A. 820 (1922), which is not available as a matter of right but in the court's discretion. Conn. Gen. Stat. Ann. § 49-24; North



End Bank & Trust Co. v. Mandell, 113 Conn. 241, 115 A. 80

(1931). The statutory scheme on its face permits defendants to introduce evidence at a hearing regarding the true value of the property sought to be foreclosed, and leaves the decision as to the appropriate valuation, and the propriety of sale at the price offered, to the discretion of the court.

Plaintiff has also challenged the constitutionality of these Connecticut statutes on grounds that they deny him his constitutional right to a jury trial, and his rights to present evidence and cross-examine witnesses. However, the seventh amendment guarantee of a jury trial has not been included in the due process of law protected against state action by the fourteenth amendment. Curtis v. Loether, 415 U.S. 189, 192 (1974). Compare Pernell v. Southall Realty, 416 U.S. 363 (1974). Plaintiff's final argument is also without merit. A similar constitutional challenge to Connecticut's strict foreclosure procedure was unsuccessful only a decade ago. Buck v. Morris Park, Inc., 153 Conn. 290 (1965), appeal dismissed for lack of a substantial federal question, 385 U.S. 2 (1966). The essential requirements of due process are still satisfied by this procedure. And, as noted above, the court may permit a hearing regarding the value of the property in a foreclosure by sale.

The plaintiff's motion for the designation of a three-judge district court is denied. The "constitutional issues" he seeks to raise are insubstantial under the standard

H6

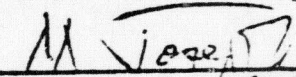


reiterated by the Supreme Court in Goosby v. Osser, 409 U.S. 512, 518 (1972).

Accordingly, the complaint is dismissed as to all defendants for failure to state a claim upon which relief may be granted. Rule 12(b)(6), Fed. R. Civ. P.

SO ORDERED.

Dated at Hartford, Connecticut, this 16<sup>th</sup> day of August, 1976.

  
M. Joseph Blumenfeld  
United States District Judge



UNITED STATES  
DISTRICT OF CONNECTICUT

CLERK  
U.S. DISTRICT COURT  
HARTFORD, CONN.

STANLEY V. TUCKER

vs.

PAUL B. CRIKELAIR, MARGIE  
THRELKELD, J. JEAN NEAL,  
ROBERT R. ANDERSON, and  
JOHN P. COTTER, individually  
and in his capacity as Chief  
Court Administrator for  
Connecticut

CIVIL ACTION NO. H 75-310

JUDGMENT

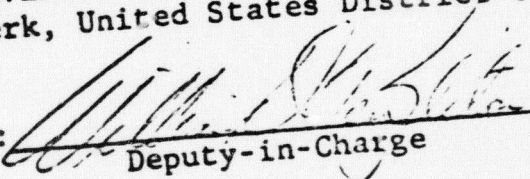
The above-entitled action came on for consideration by the Court by the Honorable M. Joseph Blumenfeld, United States District Judge; and,

The Court having considered the Plaintiff's Complaint and the relief requested file s Memorandum of Decision denying the requested relief and dismissing the Complaint as to all of the Defendants for failure of the Plaintiff to state a claim upon which relief may be granted;

It is accordingly ORDERED and ADJUDGED that the Plaintiff's Complaint be and hereby is denied and dismissed.

Dated at Hartford, Connecticut, this 20th day of September, 1976.

SYLVESTER A. MARKOWSKI  
Clerk, United States District Court

By:   
Deputy-in-Charge

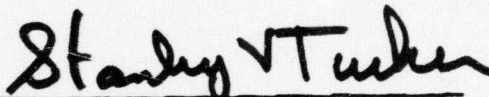


AFFIDAVIT OF SERVICE BY MAIL

I, STANLEY V. TUCKER, herby certify that on this 2nd of December 1976 I served the Brief and Appendix herein on the Respondents herein by depositing a true copy thereof in the U. S. mails at Hartford, Conn postage prepaid addressed:

Robert R. Anderson, Esq  
621 E. Main Street  
Santa Paula, California

Daniel R. Schaefer  
Barney Lapp  
Asst Attorney General  
30 Trinity Street  
Hartford, Conn .

  
STANLEY V. TUCKER

- (2) copies of Brief served
- (1) copy of Appendix served